

## HARYANA SHAHARI VIKAS PRADHIKARAN

Memo No.HSVP/CCF/Acctt-II/2018 196492

Dated: 28/04/2018


To

The Welfare Association,  
Reg Office No. 626, Sector-15, Sonapat.

**Subject:- Speaking order passed in compliance of the order issued by the Hon'ble High Court in CWP No.10095 of 2018 titled as Welfare Association, Sector-15, Part-I, Soenpat.**

1. Please refer to the subject cited above.
2. Please find enclosed herewith the copy of speaking order No. 20/2018 passed by the Chief Administrator, HSVP, in case of CWP No. 10095 of 2018 titled as Welfare Association, Sector-15, Part-I, Sonapat, in compliance of Hon'ble High Court vide order dated 25.04.2018.

DA/As above:


  
Chief Accounts Officer,  
For Chief Administrator,  
HSVP, Panchkula

Endst.No.HSVP-CCF-Acctt-II-2018/-196495 Dated: 28/04/2018

A copy of the above is forwarded to the following for information and necessary action please:-

- i. The Esate Officer, HSVP, Sonapat.
- ii. The District Attorney, HSVP, Panchkula.
- iii. The G.M.(IT), HSVP(HQ), Panchkula alongwith speaking order no. 20/2018 with the request to upload on HSVP Website.

DA/As above:

  
Chief Accounts Officer,  
For Chief Administrator,  
HSVP, Panchkula

SPEAKING ORDER NO. 20/2018

This speaking order is being passed in compliance of the orders dated 25.04.2018 of Hon'ble Punjab & Haryana High Court in CWP No. 10095 of 2018 titled as Welfare Association, Sector 15, Part I, Urban Estate, Sonapat Vs Haryana Urban Development Authority and other. The order dated 25.04.2018 is reproduced as under:-

*"After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.1 to take a decision on the letter dated 24.1.2018 (Annexure P-6) and the legal notice dated 12.3.2018 (Annexure P-7), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of three months from the date of receipt of the certified copy of the order."*

2. After receipt of ibid order, an opportunity of hearing was given to the petitioner on 21.06.2018. Sh. Mohan Singh Manocha, Secretary appeared on behalf of the petitioner and reiterated the averments made Annexure P-6 and P-7.

3. The petitioner's contention that surplus amount has been charged at time of application and allotment is liable to be rejected and not tenable in view of the express provisions contained in the Haryana Urban Development Authority (Disposal of Land & Buildings), Regulations, 1978 (hereinafter referred to as 'Regulations, 1978'). In this regard, the reference to the following provisions in Regulations, 1978 is necessary to be considered:

**Regulation 4** of Regulations, 1978, defines the tentative price as under:-

*"The tentative price/premium for the disposal of land or building by the Authority shall be such as may be determined by the authority taking into consideration the cost of land, estimated cost of development, cost of buildings and other direct and indirect charges as may be determined by the Authority from time to time."*

**Regulation 10** of Regulations, 1978, provides as under:-



- i) *In the case of sale/lease of land/building by allotment the transferee or lessee shall be liable to pay to the Authority, in addition to the tentative price/premium, the additional price/premium, if any, determined in respect there to under these regulations.*
- ii) *The additional price/premium shall be payable by the transferee or lessee within a period of thirty days of the date of demand made in this behalf by the Estate Officer without interest or in such number of installments with interest as may be determined by the Chief Administrator.*

**Regulation 2 (b)** of Regulations, 1978 further provides as under:-

*"ADDITIONAL PRICE" and ADDITIONAL PREMIUM" means such sum of money as may be determined by the Chief Administrator in respect of the sale or lease of land or building by allotment which may become payable by the transferee or lessee with respect to land or building sold or leased to him in a sector on account of the enhancement of compensation of any land or building in the same sector by the Court on a reference made under section 18 of the Land Acquisition Act, 1894 and the amount of cost incurred in respect of such reference."*

**Besides the above provisions, allotment letter also provides as under:-**

*"The above price is tentative to the extent that any enhancement in the cost of land awarded by the competent authority under the Land Acquisition Act shall also be payable proportionately, as determined by the Authority. The additional price determined shall be paid within 30 days of its demand."*

4. It is contented by the petitioner that the authority at the time of the application and allotment charged more amount in proportion to the awarded amount. The petitioner in this regard has failed to place on record

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any substantive evidence in support of its averment. In this regard it will be relevant to state that the initial price is the tentative price which is fixed in terms of regulation 4.

**Regulation 4** of Regulations, 1978, defines the tentative price as under:-

*"The tentative price/premium for the disposal of land or building by the Authority shall be such as may be determined by the authority taking into consideration the cost of land, estimated cost of development, cost of buildings and other direct and indirect charges as may be determined by the Authority from time to time."*

However, the copy of the price fixation is also being sent to the petitioner with the order. Therefore, the averment of the petitioner that surplus amount was charged at the time of allotment is incorrect.

5. Further, in so far as the contention of the petitioner that the NOC was issued to the subsequent purchaser's without any demand shows that the authority calculated the enhancement and charged it accordingly at the time of original application / allotment is not correct because the tentative price is fixed on the basis of award of LAO and other direct/ indirect charges and there is no mechanism to anticipate the enhancement that may be awarded in future. Further, the NOC is issued against the tentative price.

6. In regard to the averment of the petitioner that there is a limitation in raising the demand, it is pointed that the same is not legally tenable in view of the specific provision made in Regulation 10.

**Regulation 10** of Regulations, 1978, provides as under:-

- i) *In the case of sale/lease of land/building by allotment the transferee or lessee shall be liable to pay to the Authority, in addition to the tentative price/premium, the additional price/premium, if any, determined in respect there to under these regulations.*

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ii) *The additional price/premium shall be payable by the transferee or lessee within a period of thirty days of the date of demand made in this behalf by the Estate Officer without interest or in such number of installments with interest as may be determined by the Chief Administrator.*

7. In so far as the calculation is concerned the calculations of the petitioner are not correct in as much as the amount awarded by the Hon'ble Supreme Court @ the rate of 45 per sq. yard was only the market value determined as on the date when notification U/s 4 was issued. The said does not includes the Statutory benefits which included Solatium, interest etc. Therefore, the calculation of amount of as Rs 789.66 sq mtr. is correct as per record.

The detailed calculation circulated vide letter dated 29.12.2017 is available on the website of the HSVP. However, a copy of the calculations is also being sent to the petitioner with this order.

8. The petitioner while disputing that surplus amount was charged at the time of application/ allotment has raised an issue that details of the site sold in auction are required. It has further been contented that area of Shopping sites, roads etc school allotment was the liability Of the Government.

I have considered the submission & I am of the view that the submission has been made without appreciating & understanding the calculations. In so far as commercial sites or any other site through auction are concerned the enhancement compensation is fully borne by HSVP.

In so far as common facilities are concerned the enhancement of said area is distributed equally on the saleable area which includes the commercial area also and thus the appropriate amount of common facilities is also borne by HSVP to the extent of area sold through auction.

9. A harmonious and co-joint reading of the above stated provisions makes it amply clear that the principles behind the calculations of tentative price and enhanced price are entirely different and based on different footing. The enhanced compensation is determined by the competent court

of law and this includes the market value, interest, cost etc as may be allowed by the court. The enhanced compensation is distributed proportionately in a sector considering the saleable area which is determined by the Chief Administrator. Therefore, it becomes mandatory for an allottee to pay compensation as enhanced by the competent court of law as an additional price/ premium and tentative price as fixed does not affect the charging of enhanced compensation amount from the allottee. Thus, the price on which plot is allotted is the tentative price excluding the enhanced compensation, which is not the factor to be considered for fixation of said price.

10. This contention is therefore meritless because the additional price is apportioned proportionately on the saleable area which comprises residential as well as commercial area and any other saleable area. Further, in case of commercial plots, tentative price of land so determined as per Regulation 4 of Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978, is taken as minimum initial reserve price of auction and allotment is to the highest bidder by auction under Regulation -6 of Haryana Urban Development (Disposal of Land & Buildings) Regulations, 1978.

11. That a co-joint reading of the aforesaid regulations makes it clear that disposal of land by sale or lease through process of auction is entirely different from disposal of land by sale or lease through process of allotment, with different procedure. There is no legal provision to recover enhanced compensation from plot-owners to whom allotment was made as a result of auction. Therefore, the amount collected from disposal of the commercial sites through auction by very scheme of the Act and regulations do not affect the determination of the additional price chargeable from the allottees of the residential plots. But for the purpose of calculation of additional price, the incidence of enhanced compensation on account of commercial area is not cross subsidized or passed on to the residential plot-holders. Any amount payable on account of enhanced compensation of the commercial area is borne by HUDA and is taken outside the purview of the

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calculations made for determining the additional price payable by the plot allottees. Therefore, for this reason also, the amount recovered from auction of commercial sites is and cannot be taken into account while determining the additional price which is charged from allottees of residential plots.

12. EWS is subsidized scheme. The Hon'ble High Court in CWP NO. 1483 of 1997 titled as Bishan Sawrup and Ors. Vs State of Haryana and ors. has held that the members of EWS category and those belonging to other categories and if so interpreted, it would mean that the members of the EWS category can be asked to pay enhanced cost in the same proportion in which they had paid the tentative price fixed at the time of allotment.

I am of the considered view that the demand notices issued by the Estate Officer, HSVP, Sonapat are strictly in accordance with the terms and conditions of the allotment letter and policies of HSVP. Accordingly, the representation is disposed off.

  
Chief Administrator,  
HSVP, Panchkula.